

Department of Environmental Quality
Office of Environmental Assessment

Notice of Public Hearing
Substantive Changes to Proposed Rule AQ238
Severe Ozone Nonattainment Area Major Source Fee
(LAC 33:III.209) (AQ238S) and
Proposed Revisions to the Baton Rouge Ozone Attainment State Implementation
Plan (SIP)
(0405Pot1)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et. seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et. seq., the secretary gives notice that the department is seeking to incorporate substantive changes to the proposed amendments to the Air Quality regulations, LAC 33:III.209 (Log #AQ238S), which was originally noticed as AQ238 in the February 20, 2004, edition of the *Louisiana Register*. This rule is also being proposed as a revision to the Louisiana State Implementation Plan (SIP).

The department has made substantive changes to address comments received during the public comment period from the Environmental Protection Agency regarding approvability of AQ238 as proposed on February 20, 2004.

A strikeout/underline/shaded version of the proposed rule that distinguishes original proposed language from substantively changed language can be viewed by visiting the DEQ website at <http://www.deq.louisiana.gov/planning/regs/addition/index.htm>.

A public hearing on the substantive changes and the SIP revision will be held on June 24, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

Written comments regarding the substantive changes must be received no later than July 1, 2004, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Persons commenting should reference AQ238S in their correspondence. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ238S.

This regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374 or on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs

§209. Annual Fees

A. ...

B. All parties conducting activities for which the Clean Air Act Amendments of 1990 Section 185 fees apply shall be subject to the payment of such fees by the due date indicated on the invoice. Except as provided for in Paragraph B.1 of this Section, any owner or operator of a major stationary source that is located in the Baton Rouge Severe Nonattainment Area (Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes) shall pay a fee in accordance with Paragraph B.34 of this Section beginning in 2007 and in each calendar year thereafter until the Baton Rouge Nonattainment Area achieves attainment with the 1-hour National Ambient Air Quality Standard for ozone (40 CFR 50.9), or until the U.S. EPA revokes the 1-hour ozone standard.

1. Exemptions

a. No major stationary source shall be required to pay fees required by this Subsection for emissions that occur during an extension year granted by the EPA administrator according to Section 181(a)(5) of the Clean Air Act.

b. Any emissions unit that begins initial operation after the attainment year shall not be subject to the requirements of this Subsection.

c. Any emissions unit that meets the *clean emissions unit* criteria shall not be subject to the requirements of the Subsection.

2. Definitions. All terms used in this Section, unless the context otherwise requires or unless specifically defined in the Louisiana Environmental Quality Act or in other regulations promulgated by the secretary of the department or his predecessor, shall have their usual meanings, except for those terms specifically defined as follows.

Attainment Year—the calendar year that the Baton Rouge Nonattainment Area is required to reach attainment of the 1-hour national ambient air quality ozone standard.

Baseline Amount—the yearly average of the sum of actual volatile organic compounds (VOC) and nitrogen oxides (NO_x) emitted from nonexempt units during any three **calendar** years from 1998 through 2002. The *baseline amount* shall be determined in accordance with Paragraph B.3 of this Section. The three years selected need not be consecutive.

Clean Emissions Unit—an emissions unit that meets one of the following criteria:

i. is equipped with an emission control technology with a minimum control efficiency of at least 95 percent; or

ii. is equipped with emission control technology that meets the requirements for Best Available Control Technology (BACT).

Major Stationary Source—any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of either VOC or NO_x.

3. Baseline Determination. Facilities shall identify the three years that are most representative of normal operations to be used in the calculation of the baseline amount. The identification

will be submitted with the annual emissions inventory submitted in accordance with LAC 33:III.919 for the calendar year 2007.

4. Fee Requirements

a. For VOC and NO_x, each major stationary source shall be assessed an annual fee payable to the department in accordance with LAC 33:III.215. The fee shall be calculated as follows:

$$\text{Fee} = [A - (0.8 \times B)] \times C$$

where:

A= the sum of VOC and NO_x emissions in tons per year actually emitted during the previous calendar year.

B= the baseline amount.

C= a fee of \$5000 per ton, adjusted by the Consumer Price Index in accordance with Section 185 of the Clean Air Act, as amended [42 USC 7511d(b)(3)].

b. If the sum of VOC and NO_x emissions (A) is less than or equal to 80 percent of the baseline amount (B), the fee shall be set to zero.

c. By the end of calendar year 2007 and each year thereafter, the department shall assess a fee for emissions in the previous calendar year.

d. By the due date indicated on the invoice and each year thereafter, each facility subject to this Subsection shall remit the assessed fee to the department in accordance with LAC 33:III.215. See LAC 33:III.217 for late payment fees. See LAC 33:III.219 for action taken regarding nonpayment of the fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:611 (September 1988), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:17 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:264 (February 2000), LR 30: